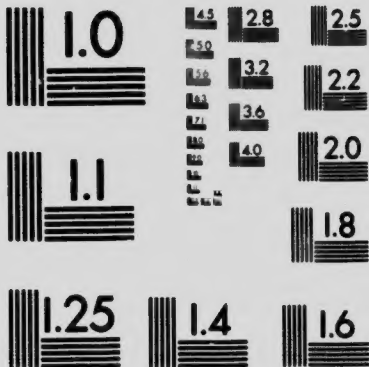




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# EXPERTITIS AND PERIEXPERTITIS

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## EXPERTITIS AND PERIEXPERTITIS

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By L. H. D.

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As all readers of this JOURNAL are medical men, I shall deal *secundum regulam* with a medical subject, "Expertitis and Periexpertitis, their Causes and Treatment."

These two maladies are wholly distinct, arise, as a rule, from different causes, and require different treatment: and I mention this clear at the outset, as too many, chiefly indeed those at present or at some time in the past afflicted with the former, exhibit a strong desire to identify the two and invariably prescribe the same course of treatment for both.

The name "Expertitis" is regularly formed from "Expert" and the suffix, "itis," used in the ordinary medical sense of "a state of inflammation"—and, of course, the word refers to the expert in a state of inflammation, or excitement—"Inflammation—The condition of being inflamed mentally, excitement, etc." (New Oxford Dict., sub voc.). This condition generally has its origin in a court-room: and the immediate and determining cause is almost invariably cross-examination.

The symptoms are well known and easily recognized. The expert exhibits the usual signs of inflammation, heat, rubor, general uneasiness. Sometimes there are also other physical manifestations, such as spasmodic contraction of the flexors of the phalanges, the head may be thrown back and the nostrils dilated, or sometimes the whole body is flexed anteriorly—occasionally the patient exhibits a desire to take the cross-examiner out of the court-room and there take it out of him—which, when you come to think of it, sounds rather paradoxical. His condition is described in the vernacular as "madder than a wet hen," although certain of the lower and less regenerate orders use in lieu of the last three words, one only and that shorter and uglier, though of respectable Saxon ancestry.

This form of Expertitis is sporadic, non-contagious, non-infectious and it does not spread by bacillus, coccus or spirillum. One very curious feature is that it seems to have an

opposite effect upon almost all who come within its sphere of influence—a sort of *contre coup*, as it were.

We are told that when Apollo was to give voice to oracles at Delphi, his priestess, the Pythia, mounted her lofty, gilded tripod over the rock-cleft which went down to Hades, and, overcome by the fumes, she became ecstatic and raved out her words of awful import. And the madder and more ecstatic and raving she became, the more composed and wiser became her hearers. So in this strange disease, the madder the expert grows, the gladder those who stand around—no one sympathizes with him in his affliction or joins him in his anger—they all rejoice and exult and say under their breath, “Hit him again, he’s got no friends.”

The etiology is varied:—

Generally, as we have seen, the immediate cause is cross-examination. But this has no effect unless there be a weakness somewhere—unless the natural power of resistance is degraded from some cause. The causes of this degradation are not always the same—I shall consider the chief.

First: Ignorance—by which I mean that the expert has tried to conceal his ignorance on some point but it has come to light—and he has lost his temper in trying to conceal it. This is not by any means universal. I well remember a prominent, experienced and very able member of the profession (dead but the other day), who constantly flew into a passion when he was being cross-examined, and so rendered his evidence in many cases worse than useless—indeed often very harmful to the side calling him.

No one would venture to suggest—I, least of all—that the medical profession in Ontario is not, as a rule, well-educated, well-informed and skilful—but, as in every other profession, there are exceptions, and it is too often the case that these exceptions are selected to give expert testimony—in no few cases, indeed, because of that very ignorance which they wear naked and not ashamed.

If the diathesis be that of ignorance, and the excitement of the expert be due to such ignorance, no one could wish that the disease should not make its appearance.

Or the patient may be “brash.” I am told that there is no

such word in the English language as "brash." Perhaps not, but there is in the Canadian. We Canadians have words that are not recognized by other English-speaking people—for instance, we call a crick "a crick," and not "a stream" or "a brook" or a "rivulet"—let alone "a creek"—and writing for Canadians I do not hesitate to use the Canadian word "brash." Indeed, what word is there in literary English to take its place? What word is there to indicate the habit of mind which makes the fool rush in where angels fear to tread—the rash jumping at something not half-developed or half-understood? A question is being put to a witness—he hears half of it and at once knows more of what the barrister means than the lawyer himself, the witness answers with enunciation something he was not asked, and is discomfited—and inflammation sets in—"Expertitis"—and everyone rejoices.

Or, is the expert what the rude boys on the street call a "clever Alexander"?—that or something equivalent I seem to have heard applied to the class of expert I mean. Flippant, supercilious, jesting, forgetful alike of the dignity of the Court which he as a good citizen is bound to uphold, and of the solemnity of the oath which he laid upon his soul. A retort or a rebuke makes him feel his position, and he is humiliated. It is his own fault; for at least he has made it possible for this affliction to come upon him.

Again, he may be loquacious and say more than he should. In the multitude of counsellors there may be wisdom; but never in the multitude of words. No man has ever yet talked much without saying something not only which might have been left unsaid, but which should have been left unsaid. A witness should understand that all he is in the witness-box for is to answer questions put to him—he is not responsible for the law, for the manner in which the case is being conducted or for the result—his whole duty is to answer truthfully without *suppressio veri* or *suggestio falsi* such questions as are put to him, and in such a way as to impress the trial tribunal with his desire and capacity to tell the truth. Whatsoever is more than these cometh of evil.

But the most frequent condition of affairs predisposing the expert to this disease is dishonesty. I use a blunt, plain term to describe a plain condition. An expert, too often, is chosen,

not because of his knowledge of the subject or because of his high character, but because of his easy conscience—easy because seared as with a hot iron—and because of his ingenuity to make the worse appear the better cause. He may not be ignorant, he may indeed be well-read and able, but he is not honest—he will swear up to his retainer whatever the state of the facts; he is of the class who, when doctors enter the witness-box and testify to one opinion, for a fee, will swear to an opposite opinion for a larger fee. He may be a most impressive personage, grave, dignified and persuasive, and must be feed accordingly.

Some only of this stamp—and they, the exception—ever exhibit any symptoms of inflammation: in most instances they are cool, make no manifestations of annoyance even when plainly caught lying—no heat, no redness, no sweating, no pain. It were much to be wished that such were attacked by “*expertitis*,” *pour encourager les autres*—they are the pests of society, a disgrace to their profession, a peril to the administration of justice. In the words of the negro, “If the devil does not get them, there is no use having a devil.”

When one of this stamp is caught off his guard and falls a prey to the disease we are discussing, all good men, and especially all honest physicians—and these are a per cent. of the profession—rejoice.

There remains another class to be considered. An expert, learned, modest, well-mannered, honest—a credit to his profession—may be goaded by unfair cross-examination to such an extent as to fall a victim to “*expertitis*.” Lawyers are an irritating tribe; they have much latitude, and sometimes they exceed their legitimate privileges. But remember, the Court is but the modern substitute for a physical combat which society compels all to resort to who desire redress for a wrong—that the lawyer stands the champion of his client, taking the place of the armed champion of the ancient litigant, and that he must not leave untried any weapon which can be honourably used to win his cause. He must consider no one but his client, no interests but those of his client—his weapon, indeed, he must wield as the sword of the warrior and not as the dagger of the assassin, but he is to wield it in any way an honourable soldier may—and no one should complain. In all wars many



innocent persons are hurt other than the contestants, unavoidably hurt—the soldier must consider, and always consider his cause, everything else being insignificant in comparison with that. So the lawyer—and the very persons who complain most bitterly of cross-examination would be the bitterest in condemnation of practice which, in a case of their own, forbade or limited cross-examination of the opponent witness.

No doubt, lawyers will transgress; sometimes they may not be checked by the trial Judge, sometimes the transgression is effected before the Judge can interfere, and sometimes he may be lax or loath to interfere with the line of cross-examination. Many times and oft, witnesses, experts as well as others, have reason to complain of insinuation indeed even insult is not wholly unknown. But then, Courts are human institutions, and, like all other human institutions, must be imperfect; Judges and lawyers are but men, and there is a great deal of human nature in man.

Again, an expert like the doctor I have already referred to, may be irritable and impatient of contradiction or non-concurrence in his opinion or angry at any question of his capacity or honesty. Some of these are of high standing in their profession and of undoubted ability and honesty, though this is not the rule. Such experts must, in the witness-box as elsewhere, suffer from the effects and defects of their qualities.

Now, the treatment depends upon the predetermining condition. Is the expert ignorant? Let him learn. Brash? Let him wait till he understands what is asked him. A "smart Aleck"? It is an awful thing to be a fool, and there is no cure for it. Loquacious? Let him answer the question and shut up. Dishonest? Pray for a new heart, try to think of the sanctity of his oath, his duty to his God, his country, his profession and himself. Or is he the victim of an impudent lawyer unrestrained by a weak Judge? Let him bear the affliction as a man, like all other undeserved and inevitable afflictions. It may be better that he should unjustly suffer rather than that the impostor should not be unmasked and the rascal caught.

Now, there are few, if any, who would desire that this disease should not occur in a case other than the last-named. "Expertitis" is like pain, not at all an unmixed evil, but in



many, indeed in most cases, indicating the existence of something wrong in the subject attacked; and it may be of immense value.

But many confuse this condition of the expert with something entirely different—something arising from other causes, requiring different treatment and attacking different people—I mean “Periexpertitis,” which will now be considered.

This technical word, “Periexpertitis,” is also regularly formed. Many words with the prefix “peri” and the suffix “itis” indicate an inflammation of an organ itself designated by a word with the prefix. For example, we have pericarditis, an inflammatory condition of the pericardium, pericranitis, of the pericranium, periostitis, of the periosteum, peritonitis, of the peritoneum, etc., etc.; but generally there is no organ or part so named, and what is meant is an inflammatory condition about a part whose name forms the middle portion of the title of the disease. For example, pericowperitis is not the inflammatory condition of the pericowper, nor periorchitis that of the periorch, pericolitis of the pericole, nor perityphlitis of the perityphil—but these words mean inflammation about Cowper’s gland, the orchos, the colon and the caecum or typhlon. (By the way, I do not find in any of the works on the practice of medicine, Perry Davis’ Pain Killer mentioned as a great specific in all these diseases whose names begin with “peri.”)

So, periexpertitis is not the inflammatory condition of the periexpert, but an inflammatory condition about the expert. The affliction designated by this name is generally caused by the expert, and may be defined as “an inflammatory condition about and in general caused by the expert.”

It is sporadic, endemic, epidemic and academic. Sporadic when it attacks one person only, generally the Judge who listens to the expert or the cross-examining counsel; endemic, when practically everybody in Court experiences it; epidemic, when the newspapers get hold of it, and academic, when an Academy of Medicine or a Medical College takes it up. In the first three forms, the symptoms may be much the same—generally, however, more masked in the first variety. Perhaps the most generally observed symptom in the second and third forms is the repeated utterance by the patient of the words, “Well, I am jiggered,” or, “Well, I *will* be blowed”—frequently the last

word in either expression is replaced by a monosyllable of ancient and Teutonic origin much in use in certain of the churches, and significant rather of the ultimate spiritual fate of the utterer than of his existing temporal and physical condition.

The academic form is much masked, and without careful and close scrutiny may escape observation altogether. The chief characteristic is an apparent hopelessness of cure, alternating with transitory delusions as to the disease itself and the proper sanitary and sanatory measures to be adopted.

Now, there are many instances in which no properly constituted person could resist an attack of "periexpertitis." Where the expert is plainly ignorant or plainly untruthful, or makes an ass of himself generally, a feeling of disgust supervenes in all who hear his evidence or hear of it, and this is the first stage of "periexpertitis."

But this is not always the case—not seldom, ignorance is the true cause—ignorance as to the true function of the expert witness. His function is to give an opinion. Now, while there may be, and are, many matters upon which there cannot be an honest difference of opinion, there are many instances in which two men of equally high standing, of equally great integrity and equal means of knowledge, may honestly be of directly contrary opinion. When this occurs, there is an outcry—which we do not have when two clergymen hammer each other with zeal:

And prove their doctrine orthodox  
With apostolic blows and knocks.

But the other day we had a Roman Catholic divine saying things about a Presbyterian Doctor of Divinity and his doings, which savoured of the olden time: and charges are not infrequently made by one set of clergymen against another which would preclude their remaining fellow-members of a respectable club. No one doubts the perfect honesty of all the charges, the facts are in most instances not at all in dispute, but the opinions of those concerned are so different.

So in all departments of life. The Prime Minister of Canada has his troubles with the honest free-trader, and the honest protectionist—the low-tariff man and the high—the big navy member, the little navy and no navy at all. One set of poli-

ticians will charge their opponents with being traitors to British connection and the like, but that is but the technical way of expressing non-concurrence in their opinions. No one asks voters to be of the same opinion—or of the same opinion long—or of any opinion—not infrequently the voter has none, he just votes with the party and “runs wid’ de machine.”

And lawyers? Please do not ask me!! Sometimes it depends upon whose ox is gored; but more often, I hope, upon honest difference of opinion.

Artists, authors, all who have any opinion upon anything, will necessarily differ from those who have an opinion on the same matter. There is said to be nothing sure but death and taxes: and why ask doctors to agree?

Again, the experts are often misrepresented or misunderstood. It is not every hearer who can understand the terminology of an expert—and understand that an apparent contradiction is simply a different manner of saying the same thing.

And no one should depend upon the newspaper report of any trial or of any evidence. Not that reporters intend to be unfair, much less that they intend to misrepresent—but the usual and ordinary does not make good copy—the unusual and bizarre are seized upon and exploited, “featured.” Anything which will strike the fancy, furnish a good head-line and make a good story, is, of course, what a reporter looks for, and what he pictures for his readers. Too often but a small part of the evidence is set out—and a false pen picture is inevitable. Often the experts in reality agree in every point except a few minor ones only: but it is the difference, not the agreement, of which the people are told and the papers are full.

Leaving aside these causes, viz., ignorance of the real nature of expert evidence, ignorance of what the experts really say and incapacity to understand what is said, the chief cause of perititis is the expert himself. Shameful ignorance and more shameful dishonesty are too common, and these bring the name of expert into disrepute and influence the people about the expert.

The remedies are such as should remove the causes. For the ignorance of the people as to the nature of expert evidence, I know of no remedy wholly efficient—it is the custom of some

Judges, in addressing juries, to point out the real nature of such evidence; and the men on these juries and others who listen to the charge should know the difference. But these are, and must be, few. To get at the press, I know no way: perhaps if medical journalists were to make a point of now and then stating clearly the true theory of expert evidence and the practical unavoidableness of difference of opinion, it would have some effect. As it is, it seems to me that not much of this is done: but in some instances, at least, remedies are suggested which must prove wholly hopeless.

The chief means of preventing further outbreaks of the disorder and curing the existing troubles must be furnished by the experts themselves. If experts were all capable and all honest, there would be little scandal in the future, notwithstanding that difference of opinion must always be expected. This is the great panacea, and all others are at the best palliative, and at the worst mere and sheer illusions.

Some advocate an appointment by the Crown of three medical men who are considered to be "of unquestioned scientific standing \* \* \* to advise the Crown and its appointees in all medical and medico-legal matters and appear in Court whenever needed." This overlooks the cases in which the Crown is not concerned—civil cases in which immensely the greater part of expert evidence is given. There are now in the employ of the Crown medical men of unquestioned scientific standing, who advise the Crown in all cases in which the Crown is interested, and appear in Court whenever needed. So this suggestion does not help.

If it be suggested that these experts shall also advise litigants in civil cases, I fancy a litigant would prefer to select his own expert. It never could be made law that a litigant *must* select an expert or experts from a body picked out for him by the Crown—in criminal cases the prisoner may, and often does, attack the Crown experts, sometimes successfully—in civil matters the liberty must be as great.

And, anyway, what is "the Crown" that it should select? Leave aside names and forms, and the Crown means Mr. Borden and his Cabinet, or Sir James Whitney and his—in plain words, the proposal means a little more patronage for

one Government or the other. Does either Government always select the very best man for any position? I ask the question, but do not press for an answer. And who is to advise the Ministers in the matter? There are two doctors in the Ontario Cabinet—are they to have the say? Or, is it to be the perquisite of the local members? What about Counties other than York? What about Hamilton? London? Ottawa? The expense would be no trifle if the scheme should be at all general: and if it were not general it would be imperfect and most unfair.

No workable method which could hope to receive legislative sanction has ever been suggested, and I fear none ever will or can be brought forward which will, or can, remove the objections I have noted. But let the whole profession try the treatment set out above, and the evil will be, if not stamped out, at least minimised.



